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## Articles

### THE IMPACT OF *UNITED STATES V. LOPEZ*: THE NEW HYBRID COMMERCE CLAUSE

*Stephen M. McJohn*

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In *United States v. Lopez*, the Supreme Court held for the first time in almost sixty years that Congress had exceeded its power to regulate interstate commerce. *Lopez* struck down the Gun-Free School Zones Act of 1990, which prohibited possession of firearms within one thousand feet of a school. More important is the basic change that *Lopez* made in Commerce Clause analysis. A long line of Supreme Court cases had consistently held that whether Congress could regulate an activity depended on whether the activity affected interstate commerce. *Lopez* continues that requirement, but also adds considerations of state sovereignty that had previously been limited to the Court's Tenth Amendment cases. Thus, *Lopez* implicitly combines two previously separate limitations on the commerce power into a heightened scrutiny of federal legislation regulating areas of traditional concern to the states. *Lopez* still permits broad federal regulation of commercial activity, and thus leaves open means for Congress to regulate most activities by regulating associated commercial aspects, provided that Congress includes specific jurisdictional language in the statute.

### PRIVATIZATION OF MUNICIPAL SERVICES: A CONTAGION IN THE BODY POLITIC

*Shirley L. Mays*

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Our cities are experiencing severe financial and sociological difficulties. Last year, more cities than ever finished the year with deficits. Tax bases are eroding as both private individuals and businesses flee cities to the comforting arms of suburbs and foreign markets. Those residents remaining within the cities' boundaries are loathe to pass tax increases to pay for the increased costs of providing social services to an urban population that is becoming more and more needy. As cities become increasingly desperate to tap new revenue sources in order to squeeze more out of already flattened budgets, and seek to revitalize community pride, many administrations are beginning to seek the privatization of "public services" as an alternative to ruin. However, private parties are not the appropriate entities to provide certain public services. Governments cannot turn over the operation of essential governmental services to private companies without abusing the trust of their citizens and circumventing the Constitution. Therefore, privatization is not the panacea that many governments believe.

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